Remarks

The Office Action mailed June 2, 2005 has been carefully reviewed and the foregoing amendment has been made in consequence thereof.

Claims 1-7, 9-17, 19-27, 37, 39-44 and 54-58 are pending in this application. Claims 1-6 and 54-58 have been withdrawn from consideration. Claims 7-27 and 37-44 stand rejected. Claims 8, 18, 28-36, 38 and 45-53 have been cancelled.

In accordance with 37 C.F.R. 1.136(a), a two month extension of time is submitted herewith to extend the due date of the response to the Office Action dated June 2, 2005, for the above-identified patent application from September 2, 2005, through and including November 2, 2005. In accordance with 37 C.F.R. 1.17(a)(3), authorization to charge a deposit account in the amount of $450.00 to cover this extension of time request also is submitted herewith.

The rejection of Claims 1, 7, 17, 37 and 54 under 35 U.S.C. § 112, first paragraph, is respectfully traversed.

Applicants respectfully submit that Claims 1, 7, 17, 37 and 54 satisfy section 112, first paragraph. More specifically, Applicants respectfully submit that the specification, including the Figures, would enable one skilled in the art to make and/or use the invention as described in the present patent application. Accordingly, Applicants respectfully request that the rejection of Claims 1, 7, 17, 37 and 54 under Section 112, first paragraph, be withdrawn.

The Office Action provides that "Applicant amended the claims 11-27-02 to define workload driver as: 'an element of the financing that will undergo an underwriting process as part of the financing evaluation'." The Office Action asserts that "this appears to be new matter not found in the originally filed specification...It is not clear what constitutes a 'work load driver'". Applicants traverse this assertion. Applicants respectfully submit that the term "workload driver" is clearly defined within the originally filed specification such that one skilled in the art, after reading the specification and reviewing the Figures, would understand the term "workload driver", and that their understanding would be consistent with the claim language.

However, in an effort to expedite the prosecution of this patent application, Applicants have amended Claims 7, 17 and 37. Claims 1 and 54 have been withdrawn from consideration.

Claim 7 as amended herein recites in part "...each workload driver is an element of the financing relating to the borrower including at least one of collateral performance, excess availability, books and records, risk classification, number of agings, frequency of borrowing, frequency of reporting, co-borrower structure, fixed charge coverage, first time asset based lending borrower and export-import bank guarantee...." Claims 17 and 37 include similar recitations.

By way of example, at least the following section of the originally filed specification provides support for the claims as currently amended herein:

> In one embodiment, *identified workload drivers entered into the model through template 90, include, but are not limited to collateral performance, excess availability, books and records, risk classification, number of agings, frequency of borrowing, frequency of reporting, co-borrower structure, fixed charge coverage, first time asset based lending borrower and export-import bank guarantee.* (Paragraph 0039.) (Emphasis added.).

Applicants respectfully submit that one skilled in the art, after reading the specification and the Figures, would understand that a "workload driver" is an element of a financing relating to a borrower including at least one of collateral performance, excess availability, books and records, risk classification, number of agings, frequency of borrowing, frequency of reporting, co-borrower structure, fixed charge coverage, first time asset based lending borrower and export-import bank guarantee.

For at least the reasons set forth above, Applicants submit that the specification meets the requirements of Section 112, first paragraph. Specifically, Applicants respectfully submit that the specification, including the Figures, would enable one skilled in the art to make and/or use the invention as described in the present patent application. Accordingly, Applicants respectfully request that the rejection of Claims 1, 7, 17, 37 and 54 under Section 112, first paragraph, be withdrawn.

The rejection of Claims 1, 6-27, 37-39, 54 and 56 under 35 U.S.C. § 112, second paragraph, is respectfully traversed.

Applicants respectfully submit that Claims 1, 6-27, 37-39, 54 and 56 satisfy section 112, second paragraph. More specifically, Applicants respectfully submit that Claims 1, 6-27, 37-39, 54 and 56 are definite and particularly point out and distinctly claim the subject matter of the invention.

The Office Action asserts that Claims 1, 6-27, 37-39, 54 and 56 "recite a 'workload driver' which is considered vague and indefinite since it is not clear if this is hardware, software, or a concept per se." Applicants respectfully traverse this assertion, and submit that the term "workload driver" is clearly defined within the claims and in the specification of the present patent application.

As stated above, in an effort to expedite the prosecution of this patent application, Applicants have amended independent Claims 7, 17 and 37. Independent Claims 1 and 54 have been withdrawn from consideration. Claim 7 as amended herein recites in part "...each workload driver is an element of the financing relating to the borrower including at least one of collateral performance, excess availability, books and records, risk classification, number of agings, frequency of borrowing, frequency of reporting, co-borrower structure, fixed charge coverage, first time asset based lending borrower and export-import bank guarantee...." Claims 17 and 37 include similar recitations.

By way of example, at least the following section of the originally filed specification provides support for the claims as currently amended herein:

> In one embodiment, *identified workload drivers entered into the model through template 90, include, but are not limited to collateral performance, excess availability, books and records, risk classification, number of agings, frequency of borrowing, frequency of reporting, co-borrower structure, fixed charge coverage, first time asset based lending borrower and export-import bank guarantee.* (Paragraph 0039.) (Emphasis added.).

Applicants respectfully submit that one skilled in the art, after reading the specification and reviewing the Figures, namely Figure 6, would understand the term "workload driver".

Moreover and by way of further example, at least the following sections of the originally filed specification describe the term "workload driver":

> While known pricing models use an average cost allocation approach, *an activity based pricing model, uses identified, workload drivers, ranked relative to importance against one another.* Such a model provides users with a tool that strengthens their ability to *evaluate deal economics which are driven by workload requirements*, and results in improved information used to make approval decisions on transactions.... (Paragraph 0037.) (Emphasis added.)
>
> In one embodiment of the activity based pricing model, there is included within the model, *identified sensitivities and triggers on the level of effort for each workload driver, the sensitivities and triggers resulting in low, medium and high deal expense levels. The model allocates portfolio and underwriting expenses based upon a combination of workload driver importance, trigger level ratings and responses from deal samples.* To measure and test the models impact on return on investment (ROI), revalidation of trigger ratings ensure appropriate allocation of expenses within the workload driver. *Using workload drivers transitions deal expenses from an average cost allocation to a per unit allocation at workload driver level.* (Paragraph 0038.) (Emphasis added.).
>
> Figure 1 is a flowchart 2 illustrating process steps for generating an activity based pricing model, used in an assessment of profitability of an account or a portfolio of accounts. Specifically, and in one exemplary embodiment of such a system, *workload drivers and trigger levels for the workload drivers are identified 4. Based on the identified 4 workload drivers and trigger levels, the workload drivers are ranked 6, using assigned weights for the trigger levels for each of the workload drivers. Using the workload drivers, trigger levels and assigned weights for each trigger level for the workload drivers, portfolio and underwriting expenses are allocated 8.* Such a process provides an activity based approach for determining costs associated with creation and maintenance of accounts and assists in decision making regarding credit line increases, portfolio rollovers and customer retention. Further, decision making is included regarding new product and market opportunities. (Paragraph 0024.) (Emphasis added.).
>
> In the same embodiment, the workload drivers collateral performance and books and records include trigger ratings of strong, moderate and weak. *An excess availability workload driver has trigger ratings of >25%, >5% and <5%. A risk classification workload driver includes trigger ratings of performing, moderate and watch. A trigger rating based on the number of agings is either equal to one, or is greater than one. The workload drivers frequency of borrowing and frequency of reporting have trigger ratings of monthly, weekly and daily. A fixed charge trigger rating is one of greater than 1.0x, less than 1.0x or less than 0.0x, where x is a fixed coverage charge. The workload drivers co-borrower structure, first time asset based lending borrower, and export-import bank guarantee have trigger ratings of "yes" or "no".* (Paragraph 0040.) (Emphasis added.).

Moreover, by way of further example, the following sections of the specification also describe the term "workload driver": paragraphs [0041], and [0047].

Applicants respectfully submit that the term "workload driver" is clearly defined within the present claims and within the specification of the present application. Applicants further submit that someone skilled in the art would clearly understand, after reading the specification and reviewing the Figures, that the term "workload driver" as used in the present application is neither computer hardware nor computer software, but rather, is an element of a financing relating to a borrower including at least one of collateral performance, excess availability, books and records, risk classification, number of agings, frequency of borrowing, frequency of reporting, co-borrower structure, fixed charge coverage, first time asset based lending borrower and export-import bank guarantee. These elements of the financing or workload drivers are reviewed by the lender as part of an underwriting process of the financing. The lender then assigns trigger levels to each workload driver wherein the trigger levels indicate the anticipated level of effort required by the lender to complete the underwriting process associated with the corresponding workload driver. The lender then allocates portfolio and underwriting expenses based upon the workload drivers and the corresponding trigger levels.

For the reasons set forth above, Applicants submit that independent Claims 1, 7, 17, 37 and 54 satisfy section 112, second paragraph. Claims 6, 9-16, 19-27, 39 and 56 all depend from independent Claims 1, 7, 17, 37 and 54. Accordingly, for the same reasons that Claims 1, 7, 17, 37 and 54 satisfy section 112, second paragraph, Claims 6, 9-16, 19-27, 39 and 56 likewise satisfy section 112, second paragraph. Claims 8, 18 and 38 have been cancelled.

For at least the reasons set forth above, Applicants respectfully request that the rejection of Claims 1, 6-27, 37-39, 54, and 56 under 35 U.S.C. § 112, second paragraph, be withdrawn.

The objection under 35 U.S.C. § 132 should be withdrawn since the term "deal" is not used in the present claims.

The rejection of Claim 37 under 35 U.S.C. § 103(a) as being unpatentable over Field (U.S. Patent No. 6,073,104) in view of Chaudhuri et al. (U.S. Patent No. 5,913,207) ("Chaudhuri") in further view of King (U.S. Patent No. 6,148,293) is respectfully traversed.

Applicants respectfully submit that none of Field, Chaudhuri, or King, considered alone or in combination, describe or suggest the claimed invention. More specifically, at least one of

the differences between the claimed invention and the cited references is that none of Field, Chaudhuri, or King, considered alone or in combination, describe or suggest a computer program embodied on a computer-readable medium for evaluating economics of a financing based on workload requirements, the financing includes at least one loan included within a loan portfolio requested by a borrower from a lender, wherein the program includes a code segment *prompts the lender to select workload drivers for the loan portfolio, wherein each workload driver is an element of the financing relating to the borrower including at least one of collateral performance, excess availability, books and records, risk classification, number of agings, frequency of borrowing, frequency of reporting, co-borrower structure, fixed charge coverage, first time asset based lending borrower and export-import bank guarantee*, and wherein each workload driver is reviewed by the lender as part of an underwriting process of the financing. (Emphasis added.)

Moreover, none of Field, Chaudhuri, or King, considered alone or in combination, describe or suggest a computer program that *prompts the lender to select trigger levels for each workload driver, wherein each trigger level assigned to a workload driver indicates the anticipated level of effort required by the lender to complete the underwriting process associated with the corresponding workload driver*, and *allocates portfolio and underwriting expenses based upon the workload drivers and the corresponding trigger levels*. (Emphasis added.)

Field describes a computerized system that will allow healthcare providers to access the commercial paper market by "selling" their patient claims to asset backed commercial paper conduits. The system generates statistical information on an historic collection experience of the provider's claims required by both the rating agencies and the sponsors of the conduits. This statistical information has two pieces: the net collectible value matrix showing the percentage of the claim actually paid by individual payers; and a collection histogram showing the timing of the payers payments from the date of initial billing. The system also generates the accounting detail necessary for controlling and auditing the provider's participation in the commercial paper conduit program. The system tracks "periodic pools" of claims so as to be able to reconcile advances, collections, interest expense, third party fees and cash settlements between conduits and providers. This statistical information has two pieces: the net collectible value matrix showing both the percentage of the claim actually paid by individual payors and the standard

deviation of this percentage; and a collection histogram showing the timing of the payors' payments from the date of initial billing.

Chaudhuri describes a method and a tool for selecting an index configuration from a set of indexes for use by a database server in accessing a database to execute a workload of queries against the database. The queries are defined by a query language supported by the database system. The index selection tool attempts to reduce the number of indexes to be considered, the number of index configurations to be enumerated, and the number of invocations of a query optimizer in selecting an index configuration for the workload.

King describes an operatively interconnected data processing and computing system for creating, servicing and paying loan agreements between a lender and borrower. The system provides for repayment of the loan together with interest at a periodically adjusted rate based on the terms of the agreement. The system includes data processing for a novel form of relationship management links, supervising and balancing the interests of contractholders, marketing agents, financial intermediaries, investment managers, investment bankers, custodians, rating agencies and an issuing entity.

Claim 37 recites a computer program embodied on a computer-readable medium for evaluating economics of a financing based on workload requirements, the financing includes at least one loan included within a loan portfolio requested by a borrower from a lender, the program includes a code segment that receives information relating to the loan portfolio and then "prompts the lender to select workload drivers for the loan portfolio, each workload driver is an element of the financing relating to the borrower including at least one of collateral performance, excess availability, books and records, risk classification, number of agings, frequency of borrowing, frequency of reporting, co-borrower structure, fixed charge coverage, first time asset based lending borrower and export-import bank guarantee, each workload driver is reviewed by the lender as part of an underwriting process of the financing...prompts the lender to select trigger levels for each workload driver, each trigger level assigned to a workload driver indicates the anticipated level of effort required by the lender to complete the underwriting process associated with the corresponding workload driver...and allocates portfolio and underwriting expenses based upon the workload drivers and the corresponding trigger levels."

None of Field, Chaudhuri, or King, considered alone or in combination, describe or suggest a computer program for evaluating economics of a financing based on workload requirements, the financing includes at least one loan included within a loan portfolio requested by a borrower from a lender, wherein the program includes a code segment *prompts the lender to select workload drivers for the loan portfolio, wherein each workload driver is an element of the financing relating to the borrower including at least one of collateral performance, excess availability, books and records, risk classification, number of agings, frequency of borrowing, frequency of reporting, co-borrower structure, fixed charge coverage, first time asset based lending borrower and export-import bank guarantee*, and wherein each workload driver is reviewed by the lender as part of an underwriting process of the financing. (Emphasis added.)

Moreover, none of Field, Chaudhuri, or King, considered alone or in combination, describe or suggest a computer program that *prompts the lender to select trigger levels for each workload driver, wherein each trigger level assigned to a workload driver indicates the anticipated level of effort required by the lender to complete the underwriting process associated with the corresponding workload driver*, and *allocates portfolio and underwriting expenses based upon the workload drivers and the corresponding trigger levels*. (Emphasis added.)

Applicants respectfully traverse the suggestion included in the Office Action at page 5 that column 20, lines 4-10 of Field describes "Trigger levels are entered for the claims where each level assigned indicates an anticipated level of effort to review the claims." Rather, Applicants submit that column 20, lines 4-10 of Field actually describes "trigger levels for adjusting advance rates" between a Special Purpose Entity (SPE) and a healthcare provider. More specifically, Field recites at column 20, lines 1-6 as follows:

> If the average net collectible value of the recently collected claims is greater than or equal to the sum [of the average net collectible value of the performance statistics supporting the current advance rates and one standard deviation from the performance statistics supporting the current advance rates], then an upward revision of the advance rates is triggered. If the change in the average net collectible value does not exceed the trigger levels, then the advance rates remain at their present level.

Field describes advance rates at column 16, lines 16-18 as "the rate at which the SPE [Special Purpose Entity] is to advance money against receivables of specific payors". In other words, the

"trigger levels" described in Field do not indicate an anticipated level of effort to review claims as suggested by the Office Action. Rather, the trigger levels described in Field are defined in the contract between the SPE and the provider, and indicate that the net collectible value statistics (average net collectible value and standard deviation) have changed by a predetermined amount such as to require a change to the advance rates (col. 19, line 33 to col. 20, line 6). Applicants therefore submit that Field does not describe nor suggest a computer program that *prompts the lender to select trigger levels for each workload driver, wherein each trigger level assigned to a workload driver indicates the anticipated level of effort required by the lender to complete the underwriting process associated with the corresponding workload driver.* (Emphasis added.)

The Office Action acknowledges at page 5 that Field does not describe or teach workload drivers.

Chaudhuri describes a method and a tool for selecting an index configuration from a set of indexes for use by a database server in accessing a database to execute a workload of queries against the database. The Office Action asserts at page 5 that Chaudhuri "discloses allocating workload drivers and trigger levels for a database (col. 2, lines 14-67)." Applicants traverse this assertion.

Claim 37 recites a "computer program...for evaluating economics of a financing based on workload requirements...said program comprising a code segment that allocates portfolio and underwriting expenses based upon the workload drivers and the corresponding trigger levels." Accordingly, even assuming, arguendo, that Chaudhuri describes what has been asserted in the Office Action, Chaudhuri still does not describe nor suggest using a computer to allocate portfolio and underwriting expenses based upon workload drivers and corresponding trigger levels. In fact, the Office Action fails to provide any support for rejecting the allocating expenses recitation included within Claim 37 other than to merely state that "It would have been obvious to one of ordinary skill in the art to include allocation expenses based upon workload drivers and their trigger level to Field because Chaudhuri et al (207) teaches workload database considerations is used to optimize database performance." *Applicants, however, respectfully submit that a tool, as described in Chaudhuri, which is used to execute a workload of queries against a database for optimizing the database has absolutely nothing to do with evaluating the*

economics of a financing based on workload requirements including allocating portfolio and underwriting expenses based upon workload drivers and corresponding trigger levels.

Accordingly, Applicants respectfully submit that Chaudhuri is non-analogous art that is not relevant to the present patent application. Given the obvious differences between a database processing tool as described in Chaudhuri, and a computer program for evaluating the economics of a financing based on workload requirements wherein the financing includes at least one loan included within a loan portfolio requested by a borrower from a lender and wherein the program includes a code segment that allocates portfolio and underwriting expenses based upon the workload drivers and the corresponding trigger levels; and the fact that the method described by Chaudhuri neither recognizes nor solves any of the problems addressed by the present invention, it is respectfully submitted that Chaudhuri is non-analogous art that would not be looked to for evaluating the economics of a financing based on workload requirements or for allocating portfolio and underwriting expenses based upon workload drivers and corresponding trigger levels as recited in the present claims.

Additionally, Applicants submit that Chaudhuri does not describe nor suggest what has been asserted in the Office Action. In contrast to what has been asserted in the Office Action, Chaudhuri does not describe nor suggest workload drivers as recited in the present claims. Rather, Chaudhuri describes accessing a database in accordance with a workload of queries. Applicants submit that the workload of queries used in accessing a database as described in Chaudhuri in no way describes or teaches a workload driver that is an element of a financing relating to a borrower including at least one of collateral performance, excess availability, books and records, risk classification, number of agings, frequency of borrowing, frequency of reporting, co-borrower structure, fixed charge coverage, first time asset based lending borrower and export-import bank guarantee.

Furthermore, King describes an operatively interconnected data processing and computing system for creating, servicing and paying loan agreements between a lender and borrower. King does not describe nor suggest a computer program as recited in Claim 37. Accordingly, Applicants respectfully submit that Claim 37 is patentable over Field in view Chaudhuri in further view of King.

For at least the reasons set forth above, Applicants respectfully request that the Section 103 rejection of Claim 37 be withdrawn.

The rejection of Claims 7 and 17 under 35 U.S.C. § 103(a) as being unpatentable over Field (U.S. Patent No. 6,073,104) in view of Chaudhuri et al. (U.S. Patent No. 5,913,207) ("Chaudhuri") is respectfully traversed.

Field and Chaudhuri are both described above.

Claim 7 recites a database for evaluating economics of a financing based on workload requirements, the financing includes at least one loan included within a portfolio of loans requested by a borrower from a lender, the database includes "data corresponding to workload drivers for a financing, each workload driver is an element of the financing relating to the borrower including at least one of collateral performance, excess availability, books and records, risk classification, number of agings, frequency of borrowing, frequency of reporting, co-borrower structure, fixed charge coverage, first time asset based lending borrower and export-import bank guarantee, each workload driver is reviewed by the lender as part of an underwriting process of the financing...data corresponding to a trigger level for each workload driver, the trigger level assigned to a workload driver indicates the anticipated level of effort required by the lender to complete the underwriting process associated with the corresponding workload driver...and data corresponding to a weight entered by the lender for each trigger level...and data corresponding to allocation of portfolio and underwriting expenses, the allocation is based upon the workload drivers and the corresponding trigger levels."

Claim 7 recites a database for evaluating economics of a financing based on workload requirements that is programmed to perform steps essentially similar to those steps performed by the computer program recited in Claim 37. Thus, it is submitted that Claim 7 is patentable over the combination of Field in view of Chaudhuri for at least the reasons that correspond to those given with respect to Claim 37.

Claim 17 recites a system for evaluating economics of a financing based on workload requirements, the financing includes at least one loan included within a portfolio of loans requested by a borrower from a lender, the system includes "a database comprising data

corresponding to workload drivers and related trigger levels for the financing, each workload driver is an element of the financing relating to the borrower including at least one of collateral performance, excess availability, books and records, risk classification, number of agings, frequency of borrowing, frequency of reporting, co-borrower structure, fixed charge coverage, first time asset based lending borrower and export-import bank guarantee, each workload driver is reviewed by the lender as part of an underwriting process of the financing, the trigger level assigned to a workload driver indicates the anticipated level of effort required by the lender to complete the underwriting process associated with the related workload driver...and a server in communication with the database, said server configured to: prompt the lender to designate at least one workload driver for the financing...prompt the lender to select trigger levels for each designated workload driver when entering data for the financing...and allocate portfolio and underwriting expenses based upon the designated workload drivers and the corresponding trigger levels."

Claim 17 recites a system for evaluating economics of a financing based on workload requirements that includes a server configured to perform steps essentially similar to those steps performed by the computer program recited in Claim 37. Thus, it is submitted that Claim 17 is patentable over the combination of Field in view of Chaudhuri for at least the reasons that correspond to those given with respect to Claim 37.

For at least the reasons set forth above, Applicants respectfully request that the rejection of Claims 7 and 17 under 35 U.S.C. § 103(a) be withdrawn.

The rejection of Claims 8-16 and 38-44 under 35 U.S.C. § 103(a) as being unpatentable over Field (U.S. Patent No. 6,073,104) in view of Chaudhuri et al. (U.S. Patent No. 5,913,207) ("Chaudhuri") in further view of King (U.S. Patent No. 6,148,293) and further in view of Freeman et al. (U.S. Patent No. 6,249,775) ("Freeman") is respectfully traversed.

Field, Chaudhuri, and King are all described above. Freeman describes a method for mortgage and closed end loan portfolio management in the form of an analytic tool designed to improve analysis of past and future performance of loan portfolios. The method includes aggregating loan units into loan vintages, wherein the loans in each vintage originate within a

predetermined time interval of one another. The method further includes comparing different vintages to one another in a manner such that the ages of the loans in the different vintages are comparable to one another. An early warning component of the system predicts delinquency rates expected for a portfolio of loans during a forward looking time window. A matrix link component of the invention combines the loan vintage analysis with the early warning component of the invention and predicts the default rate of the loan portfolios at a selected future point in time. The results of the analysis are graphically depicted and/or automatically fedback to provide "yes" or "no" decisions regarding investments in various loan portfolios (see abstract).

Claim 8 has been cancelled. Claims 9-16 depend from independent Claim 7. Claim 7 is recited hereinabove.

As discussed above, neither Field nor Chaudhuri, considered alone or in combination, describe or suggest the database recited in Claim 7. Neither King nor Freeman, alone or in combination make up for the deficiencies of Field and Chaudhuri. Accordingly, for at least the reasons set forth above, Applicants respectfully submit that Claim 7 is patentable over Field in view of Chaudhuri in further view of King and further in view of Freeman.

When the recitations of Claims 9-16 are considered in combination with the recitations of Claim 7, Applicants submit that dependent Claims 9-16 likewise are patentable over Field in view of Chaudhuri in further view of King and further in view of Freeman.

Claim 38 has been cancelled. Claims 39-44 depend from independent Claim 37. Claim 37 is recited hereinabove.

As discussed above, none of Field, Chaudhuri, or King, considered alone or in combination, describe or suggest the computer program recited in Claim 37. Moreover, Freeman does not make up for the deficiencies of Field, Chaudhuri and King. Accordingly, for at least the reasons set forth above, Applicants respectfully submit that Claim 37 is patentable over Field in view of Chaudhuri in further view of King and further in view of Freeman.

When the recitations of Claims 39-44 are considered in combination with the recitations of Claim 37, Applicants submit that dependent Claims 39-44 likewise are patentable over Field in view of Chaudhuri in further view of King and further in view of Freeman.

For at least the reasons set forth above, Applicants respectfully request that the rejection of Claims 8-16 and 38-44 under 35 U.S.C. § 103(a) be withdrawn.

In addition to the argument set forth above, Applicants submit that the rejection of Claims 37 under 35 U.S.C. § 103(a) as being unpatentable over Field in view of Chaudhuri in further view of King; the rejection of Claims 7 and 17 under 35 U.S.C. § 103(a) as being unpatentable over Field in view of Chaudhuri; and the rejection of Claims 8-16 and 38-44 under 35 U.S.C. § 103(a) as being unpatentable over Field in view of Chaudhuri in further view of King and further in view of Freeman is further traversed on the grounds that the Section 103 rejection of the presently pending claims is not a proper rejection.

Obviousness cannot be established by merely suggesting that it would have been obvious to one of ordinary skill in the art to modify Field using the teachings of Chaudhuri, King, and Freeman. More specifically, as is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination. None of Field, Chaudhuri, King, or Freeman describe or suggest the claimed combination. Furthermore, in contrast to the assertion within the Office Action, Applicants respectfully submit that it would not be obvious to one skilled in the art to combine Field with Chaudhuri, King, or Freeman because there is no motivation to combine the references suggested in the art. Rather, the Examiner has not pointed to any prior art that teaches or suggests to combine the disclosures, other than Applicants' own teaching. Only the conclusory statement that "[i]t would have been obvious to one with ordinary skill in the art to include allocating expenses based upon workload drivers and their trigger levels to Field because Chaudhuri teaches workload database considerations used to optimize database performance" suggests combining the disclosures.

More specifically, none of Field, Chaudhuri, King, or Freeman describe or suggest the claimed invention. Rather, Field teaches a computerized system that allows healthcare providers

to access the commercial paper market by "selling" their patient claims to asset backed commercial paper conduits. Chaudhuri teaches a method and a tool for selecting an index configuration from a set of indexes for use by a database server in accessing a database to execute a workload of queries against the database. King teaches an operatively interconnected data processing and computing system for creating, servicing and paying loan agreements between a lender and borrower. Freeman describes a method for mortgage and closed end loan portfolio management in the form of an analytic tool designed to improve analysis of past and future performance of loan portfolios. Combining Field with the teachings of Chaudhuri, King, or Freeman would not describe or suggest the present invention. Accordingly, Applicants respectfully submit that there is no suggestion or motivation to combine Field with Chaudhuri, King, or Freeman.

As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. Ex parte Levengood, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. Rather, there must be some suggestion, outside of Applicants' disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicants' disclosure. In re Vaeck, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991). In the present case, neither a suggestion or motivation to combine the prior art disclosures, nor any reasonable expectation of success has been shown.

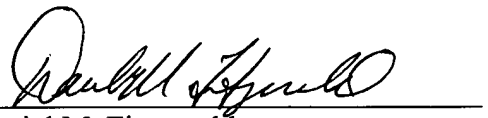
Furthermore, it is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the cited art so that the claimed invention is rendered obvious. Specifically, one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the art to deprecate the claimed invention. Further, it is impermissible to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. The present Section 103 rejection is based on a combination of teachings selected from multiple patents in an attempt to arrive at the claimed invention. Since there is no teaching nor suggestion in the cited art for the claimed combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present

invention. Of course, such a combination is impermissible, and for this reason alone, Applicants respectfully request that the Section 103 rejection be withdrawn.

For at least the reasons set forth above, Applicants respectfully request that the Section 103 rejection of Claims 7-17 and 37-44 be withdrawn.

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,



Daniel M. Fitzgerald
Registration No. 38,880
ARMSTRONG TEASDALE LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102-2740
(314) 621-5070